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IN THE

Supreme Court of the United States

October Term 1962

NO. 589

TEXAS AND NEW ORLEANS RAILROAD COMPANY, ET AL., *Petitioners*

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL., *Respondents*

BRIEF FOR RESPONDENTS IN REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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To The Honorable Justice And The Associate Justices Of The Supreme Court Of The United States:

Respondents Brotherhood of Railroad Trainman R: D. Jones, and others, respectfully present this brief in opposition to the Petition for Writ of Certiorari.

OPINIONS BELOW

The citations of the opinions below listed in Petitioners' Brief and set out in its Appendix A-B is correct.

JURISDICTION

Jurisdiction is claimed by Petitioners on 28 *U.S.C.* Sec. 1254.

However, Respondents feel that a Writ of Certiorari should not issue in this case, because the decision of the Honorable Court of Appeals is not in conflict with a decision of any other Court of Appeals, or of any decision of this Honorable Court. There has not been decided any important question of federal law which should be settled by this Court, but on the contrary the decision is in full accord with prior decisions of this Honorable Court and was decided correctly. All judicial proceedings in this case have followed the usual and accepted course of sound procedure and interpretation.

QUESTIONS PRESENTED

The statement of Petitioners as to Questions presented do not follow the assignments of error claimed in their Petition for Rehearing before United States Court of Appeals for the Fifth Circuit but are entirely different in scope. Respondents feel that a more accurate statement of the "Questions Presented" would be as follows:

(1) Whether the District Court properly denied an injunction sought to enjoin a strike over labor dispute permitted under the Railway Labor Act.

(2) Whether the Railroads can evade or avoid the mandatory requirements of the Railway Labor Act providing for mediation on any changes in rates of pay, rules or working conditions by securing a "permissible" order from the Interstate Commerce Commission changing unilaterally such rules and working conditions.

(3) Can the mandatory requirements of the Railway Labor Act providing for collective bargaining, negotiation and mediation by both parties when changes in rules, working conditions and established practices are sought, be bypassed or eliminated and unilateral labor contracts containing such changes forced upon the employees of a railroad through a "permissible" approval of contracts by the Interstate Commerce Commission.

STATUTES INVOLVED

Additional statutes involved not set out in the Petitioners Application Appendix C, pgs. 41a-48a are as follows:

(1) Railway Labor Act, as amended 48 Stat. 1186, 45 U.S.C. Sec. 151(a); 63 Stat. 107; 45 U.S.C. 155 (First).

(2) Norris-La Guardia Oct. 47 Stat. 70 et seq.; 29 U.S.C. 102, 107, 113.

The complete text of the above cited Statutes appears in Appendix C, infra, pg. 53, Supreme Court Rule 23 (1)(d).

STATEMENT

Respondents cannot undertake the burden of writing a separate statement to correct the slanted and argumentative "statement" set out by Petitioners in their application, without unduly lengthening this brief. The statement of facts set out by both the Honorable Trial Court and the Court of Appeals in their able opinions are concise, factual, accurate and undistorted. We respectfully refer Your Honors to those opinions (Pet. Appendix A-B, pgs. 1a-5a and 29a-31a).

In addition to the statement referred to, it also appears that negotiations on these changes had been in progress for many months before the serving of "section 6" notices

by the Carriers (Ex. 15-16) SR 23-36 and BofRT (Ex. 17) SR 37 and knowledge of the impending changes had been had by the Petitioners for many years. Yet no proposals for agreements in variance in the slightest detail from the provisions of the Primary Agreement and supplemental agreements were brooked by the Railroads (Ex. 1). The railroads will consent to only an agreement that does not change their pre-conceived, pre-planned unilateral program and demands.

The Interstate Commerce Commission Order of November 16, 1960, under its Finance Docket No. 21325 (R. 27-43) provided in paragraph 3 (headnote) as follows:

> "Pursuant to agreements and modification thereof. *Continued operations by Texas And New Orleans Railroad Company of port facilities* at Corpus Christi, * * *" (Emphasis supplied)

and in its conclusion as follows:

> "The facts involved in the consolidated applications here presented are all interrelated and present only two primary issues to be considered: (1) the proposed abandonment by T&NO of a portion of its present line by which it now serves Corpus Christi port area, and (2) the construction and other proposals necessary to obtain a substitute route *for continued operation by the T&NO in serving the same port area.*" (Emphasis supplied).

The "section 6" notices under the Railway Labor Act were served May 4, May 5, and May 9, 1960. The "primary agreement", was entered into on May 27, 1960, and filed with the application of three railroads on October 17, 1960. The I.C.C. ruling was dated November 16, 1960. The Tex-Mex - T&NO Joint Yard Agreement was executed on November 17, 1960, and mailed for filing with

the I.C.C. November 25, 1960. The bascule bridge was cut at midnight November 18, 1960, and the complained of changes were instituted. All during this time the matters of such changes were still pending before the Mediation Board. These mediatory efforts continued until May 8 and May 31, 1961. Notice of the proposed strike was served on the carriers on July 6, 1961 "for failure to abide by the provisions of the Railway Labor Act as amended in handling of mediation Cases A-6265, A-6266, A-6267." (Ex. 18-19-20 SR 38-40).

REASONS WHY WRIT SHOULD BE DENIED

From the facts developed in the case it will be seen that during May 1960 the three Railroads and BofRT served notices on each other under Section 6 of the Railway Labor Act, 45 *U.S.C.A.*, Sections 155-156 (ordinarily called "section 6 notices"), because of certain desired *changes in working conditions* in connection with the reloation of certain tracks due to the removal of the bascule bridge in Corpus Christi, Texas, and the establishment of a new train yard and new interchange tracks involving all three carriers and the Corpus Christi Terminal Association (CCTA).

Under the Railway Labor Act it was necessary to seek mediation after conferences failed to bring about an agreement between the parties. Such mediation was invoked and continued until May 8 and May 31, 1961.

Both Sections 155(1)(a) and 156, 45 *U.S.C.* (App. "C" p. 53) provide that once mediation has begun, "No change shall be made in the rates of pay, *rules*, or *working conditions* or *established practices* in effect prior to the time the dispute arose" during the period of mediation and for thirty days after it has ended.

Yet, in spite of this, the Railroads in concert did make and institute such changes in rules, working conditions and established practices.

This was done by means of a claimed right based upon the securing of an approval of a pre-agreement and some sub-agreements from the I.C.C. Each of the applications upon which permissive orders were issued by the I.C.C. were made after mediation had begun and before any final agreement had been reached between the railroads.

Mediation having ended and a strike called, the complaint seeking an injunction against the strike was filed and was refused. This brings us before this Court to determine the correctness of the Trial Court's ruling, and the Court of Appeals affirmance.

The question of injunctions in labor disputes is governed by the Norris-LaGuardia Act, Title 29, Sections 101-113, *U.S.C.* 47 Stat. 70 et seq. (App. "C", p. 53).

Title 45, Section 101 *U.S.C.* (App. "C", p. 53) deprives the Federal Courts of jurisdiction to issue injunctions and restraining orders in labor disputes.

Title 29, Section 107, *U.S.C.*, (App. "C", p. 53) provides the terms upon which an exception to Sec. 101 can be made. There was no pleading in this cause that unlawful acts had been committed or would be committed unless restrained, or that such had been committed and would be continued unless restrained or that the public officers charged with the duty to protect the Plaintiff's property were unwilling or unable to furnish adequate protection. Such pleadings were vital and of course the proof was most essential and there was no such proof made in this case to such effect.

Title 45, Section 108 *U.S.C.* (App. "C", p. 53 denies injunctive relief to a complainant who fails to comply

with the provisions of the Railway Labor Act, or who has failed to make every reasonable effort to settle the labor dispute by negotiation or mediation efforts.

It is apparent from the evidence in this case that the Petitioners have wholly failed to comply with the obligations imposed by the Railway Labor Act in the labor dispute in question to settle the controversy between the parties by making every reasonable effort either by negotiations or with the aid of available governmental machinery of mediation.

It is apparent from the record in this case that a plan had been instituted in concert between the three railroads involved here to effect a purpose of avoiding executing agreements with Respondents' General Committees and the employees represented by them, because at no time during any of the negotiations have the Petitioners offered to agree to anything other than their preconceived, pre-planned unilateral plans and demands.

Therefore, Petitioners having been in violation of the terms of the Railway Labor Act by instituting changes while the controversy was in mediation and by having failed to comply with the terms of the Norris-LaGuardia Act and being under the restraint of the Norris-LaGuardia Act no injunctions or restraining orders should be or can be made.

In the case of *Order of Railroad Telegraphers v. Chicago & Northwestern R. Co.*, 80 S. Ct. 761 (1960), it appears that an action by the Railroad against the union to enjoin it from striking in aid of demand for contractual right to bargain about steps to be taken to abandon stations which would abolish jobs resulted in the declining by the Court to grant a permanent injunction. This Honorable Court in affirming the Trial Court's action held, even though

the Railroads had filed applications with public utility commissions in four of the nine states in which it operated seeking permission to institute plans for the abolishment of various stations, that Section 4 of the Norris-LaGuardia Act specifically withdrew jurisdiction from a District Court to prohibit a strike. This Court stated (in answer to the arguments raised there and also here):

> "Unless the literal language of this definition is to be ignored, it squarely covers this controversy. *Congress made the definition broad because it wanted it to be broad. There are few pieces of legislation where the congressional hearings, committee reports, and the language in the legislation itself more clearly point to the necessity for giving an Act a construction that will protect the congressional policy the Act adopted. Section 2 of this Act specifies the public policy to be taken into consideration in interpreting the Act's language and in determining the jurisdiction and authority of federal courts; it is one of freedom of association, organization, representation and negotiation on the part of workers. The hearings and committee reports reveal that Congress attempted to write its bill in unmistakable language because it believed previous measures looking toward the same policy aganist nonjudicial intervention in labor disputes had been given unduly limited constructions by the Courts.* (Emphasis supplied).
>
> "Plainly the controversy here relates to an effort on the part of the union to change the 'terms' of an existing collective bargaining agreement. The change desire just as plainly referred to 'conditions of employment' of the railroad's employees who are represented by the union. The employment of many of these station agents inescapably hangs on the number of railroad stations that will be either completely abandoned or consolidated with other stations. And in the collective bargaining world today, there is

nothing strange about agreements that affect the permanency of employment. The District Court's finding that '(c)ollective bargaining as to the length or term of employment is commonplace', is not challenged. * * *

"* * * In an effort to prevent a disruption and stoppage of interstate commerce, *the trend of legislation affecting railroads and railroad employees has been to broaden, not narrow*, the scope of subjects about which workers and railroads may or must negotiate and bargain collectively. Furthermore, the whole idea of what is bargainable has been greatly affected by the practices and customs of the railroads and their employees themselves. It is too late now to argue that employees can have no collective voice to influence railroads to act in a way that will preserve the interests of employees as well as the interests of the railroad and the public at large. (Emphasis supplied).

"(4, 5) The railroad has argued throughout the proceedings that the union's strike here may be enjoined, regardless of Norris-LaGuardia, because its effort to bargain about consolidation and abandonment of railroad stations is unlawful. It is true that in a series of cases where collective bargaining agents stepped outside their legal duties and violated the Act which called them into being, we held that they could be enjoined. None of these cases, however, enjoined conduct which the Norris-LaGuardia Act withdrew from the injunctive power of the federal courts except the Chicago River case which held that a strike could be enjoined to prevent a plain violation of a basic command of the Railway Labor Act 'adopted as a part of a pattern of labor legislation.' 353 U.S. 30, 42, 77 S. Ct. 635, 641. The Court there regarded as inapposite those cases in which *it was held that the Norris-LaGuardia Act's ban on federal injunctions is not lifted because the conduct of the union is unlawful under some other, nonlabor statute.* Here, far from violating the Railway Labor Act,

the union's effort to negotiate its controversy with the railroad was in obedience to the Act's command that employees as well as railroads exert every reasonable effort to settle all disputes 'concerning rates of pay, rules, and working conditions'. 45 U.S.C. Sec. 152, First, 45 U.S.C.A. Sec. 152, subd. 1. Moreover, neither the respondent nor anyone else points to any other specific legal command that the union violated here by attempting to bring about a change in its collective bargaining agreement. It would stretch credulity too far to say that the Railway Labor Act, designed to protect railroad workers, was somehow violated by the union acting precisely in accordance with that Act's purpose to obtain stability and permanence in employment for workers. *There is no express provision of law, and certainly we can infer none from the Interstate Commerce Act, making it unlawful for unions to want to discuss with railroads actions that may vitally and adversely affect the security, seniority and stability of railroad jobs.* And for a number of reasons the state public utility proceedings, invoked by the railroad to obtain approval of consolidation or abandonment of stations, could not stamp illegality on the union's effort to negotiate this whole question with the railroad. The union merely asked for a contractual right to bargain with the railroad about any voluntary steps it might take to abandon stations and thus abolish jobs. Nothing the union requested would require the railroad to violate any valid order of any public agency. There is no testimony and there are no findings that this union has set itself up in defiance of any state mandatory order. In fact, there was no state order of any kind at the time the union first asked to negotiate about the proposed contractual change. Even if a Norris-LaGuardia 'labor dispute' could not arise out of an unlawful bargaining demand, but see Afran Transport Co. v. National Maritime Union, D.C., 169 F. Supp. 416, 1959 A.M.C. 326, the union's

proposal here was not unlawful. * * *" (Emphasis supplied).

" * * * (7) In concluding that the injunction ordered by the Court of Appeals is forbidden by the Norris-LaGuardia Act, we have taken due account of the railroad's argument that the operation of unnecessary stations, services and lines is wasteful and thus runs counter to the congressional policy, expressed in the Interstate Commerce Act, to foster an efficient national railroad system. In other legislation, however, like the Railway Labor and Norris-LaGuardia Acts, Congress has acted on the assumption that collective bargaining by employees will also foster an efficient national railroad service. It passed such Acts with knowledge that collective bargaining might sometimes increase the expense of railroad operations because of increased wages and better working conditions. It goes without saying, therefore, that added railroad expenditures for employees cannot always be classified as 'wasteful'. It may be, as some people think, that Congress was unwise in curtailing the jurisdiction of federal courts in railroad disputes as it did in the Norris-LaGuardia Act. Arguments have even been presented here pointing to the financial debilitation of the respondent Chicago & North Western Railroad and to the absolute necessity for the abandonment of railroad stations. These arguments, however, are addressed to the wrong forum. If the scope of the Norris-LaGuardia Act is to be cut down in order to prevent 'waste' by the railroads, Congress should be the body to do so. Such action is beyond the judicial province and we decline to take it. * * *"

Each of Appellants' contentions and arguments here was covered by this Honorable Court in the Telegraphers case and each contention was laid to rest.

In the case of *Afran Transport Company v. National Maritime Union,* 169 F. Supp. 416, a motion for preliminary injunction to restrain picketing was denied and the Court therein set out a review of the Norris-LaGuardia Act holding that the act barred the issuance of an injunction even in the case of a claimed secondary boycott or violation of state laws.

In the case of *A. H. Bull Steamship Co. v. SIU,* 250 F. 2d 326, (cert. denied) 78 S. Ct. 411, the Court held that an injunction would not lie to enjoin a peaceful strike in cases involving labor disputes, even though the strike might be in violation of collective bargaining agreements, by reason of the Norris-LaGuardia Act.

Another case closely in point on the facts is the case of *Butte, Anaconda & Pacific Railway Company v. BofLF&E, et al.,* 268 F. 2d 54, cert. den., 80 S. Ct. 122), where changes in working conditions were instituted by the Railroad while mediation was pending. The strike resulted and a State Court injunction was issued. Upon removal the injunction was dissolved upon the basis of Norris-LaGuardia and violations of the Railway Labor Act.

An attempt was made by a motor freight line in *Lee Way Motor Freight, Inc. v. Keystone Freight Line, et al.,* 126 F. 2d 931 to assert that the Norris-LaGuardia Act did not apply when the purpose of the strike was contrary to provisions of the Interstate Commerce Act Title 49, Sections 301-327, but an injunction granted was dissolved by the Court, which stated:

> "(4, 5) The Motor Carrier Act, supra, places upon a common carrier of freight in interstate commerce certain duties and responsibilities toward the public, and ordinarily such duties and responsibilities are paramount to private rights. But whatever other remedies

> may or may not be available, there is nothing in the exactions of the Motor Carrier Act which operates to enlarge beyond the limitations of the Norris-LaGuardia Act the jurisdiction of a United States Court in respect to the issuance of a restraining order or a temporary or permanent injunction in a controversy involving or growing out of a labor dispute.

Again in *East Texas Motor Frt. Lines v. International Brotherhood of Teamsters, etc., Local 568, et al.*, 163 F. 2d 10, a similar contention was raised that Norris-LaGuardia did not apply because what was being done was in violation of the Interstate Commerce Act, but an order denying injunctive relief was affirmed, and Honorable Judge Hutcheson said:

> "We cannot agree with appellant. Without at all giving our approval to the acts of the defendants sought to be enjoined or taking issue with Appellant's claim that the acts of the defendants were illegal and might have been enjoined in a state court suit, we are in no doubt that the case is wholly unlike those dealt with in Allen Bradley Co. v. Union, 325 U.S. 707, 65 S. Ct. 433, 89 L. Ed. 570, or Philadelphia Rec. Co. v. Manufacturing Photo-Engravers Ass'n, 3 Cir., 155 F. 2d 799; and is one arising out of a labor dispute. *Neither are we in any doubt that since it is one so arising, Plaintiff, not having complied, or attempted to comply, with the Norris-LaGuardia Act is in effect seeking to enlarge the jurisdiction of the federal courts as limited by that act by its claim that the court should issue the injunction because the acts complained of are violations of duties or obligations arising under the Interstate Commerce Act,* 49 *U.S. C.A., Sec.* 1 *et seq.* Lee Way Motor Freight, Inc. v. Keystone Freight Lines, 10 Cir., 126 F. 2d 931, a case directly in point, so decides; and we are in no doubt that it was well decided. The order appealed from is affirmed." (Emphasis supplied).

See also *Alcoa S. S. Co. v. McMahon*, 173 F. 2d 567 (cert. den.); *W. L. Mead, Inc. v. International Brotherhood of Teamsters Local No. 25*, 217 F. 2d 6.

The inclusion of the provision for the protection of employees in the act Sec. 5 (2) (f) does not serve as the sole and only provision for employees protection in cases of abandonments, mergers and consolidations. This is obvious from *Railway Labor Executives Association v. United States*, 70 S. Ct. 530, where this Honorable Court said:

> "We conclude, therefore, that the Commission, while required to observe the provisions of the second sentence of Section 5 (2) (f) as a minimum protection for employees adversely affected, is not confined to the four-year protective period as a statutory maximum."

and also in *Arnold, et al. v. L&N RR Co.*, 180 F. Supp. 429, where it is held that even though the ICC's authority to provide protection for employes as a condition to its approval of abandonments, consolidations, mergers, etc., that the employees had a right through their duly authorized representatives to enter into agreement with the Railroad as to the terms, conditions and arrangements for their own protection and could make provisions therefor by adopting, supplementing and implementing the provisions made by the Commission for their protection, and that such agrement then takes the place of the order of the Commission on such subject matter.

Petitioners have cited a series of cases[1] to the effect

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[1] Brotherhood of Railroad Trainmen v. Chicago R&I R. Co., 353 U.S. 30;
Virginia R. Co. v. System Federation, 300 U.S. 515;
BofRT v. Howard, 343 U.S. 768;
BofRT v. Denver & R.G.W. R. Co., 290 F. 2d 266 (cert. den.);
State v. L&N R. Co., 323 US 192;
Cont'd

that Norris LaGuardia is inoperative by judicially created exceptions which have been carved out of the broad domain of said act. These authorities constitute reconciliations of Norris-LaGuardia with specific later legislation or are cases where discrimination because of color was involved. But none go as far as holding that the Transportation Act can be used to circumvent the plain and unrepealed mandates of the Railway Labor Act and the Norris-LaGuardia Act requiring that all mediation efforts be used before an injunction will lie. There is much said in Petitioners' application to the effect that an I.C.C. directive is being thwarted, but the plain fact is that the I.C.C. directive is being used to avoid and evade the requirements of the Railway Labor Act.

The case of *B&O R. Co. v. Chicago River & I.R. Co.*, 170 F. 2d 654 (cert. den.), 69 S. Ct. 811, cited by Petitioner is readily distinguishable as not being in point because no labor dispute was involved. It is observed that the Court held, at page 657:

> "Concededly, if the Norris-LaGuardia Act is applicable, the Court was without jurisdiction because under Section 7 of that Act, jurisdiction is withheld from the District Court to issue an injunction in a case to which the act is applicable unless the complaint makes numerous specifically designated allegations under oath. No such allegations appear in the complaint in this suit." * * *

the Court then in discussing the *Lee Way Motor Freight v. Keystone Freight Lines* case said:

Tunstall v. BofLF & E. 323 U.S. 210;
Graham v. BofLF & E. 338 U.S. 232;
Lowden v. U.S. 308 U.S. 225;
Textile Workers v. Lucilon Mills, 353 U.S. 448;
Independent Petroleum Workers v. Esso Standard Oil Co., 235 F. 2d 401.

> "* * * it is clear that there was a labor dispute between the Plaintiff and its own employees which had resulted in a strike, and that Plaintiff, the employer, was seeking the aid of the general equity power of the Court to break the strike. An injunction was refused because a labor dispute was involved within the meaning of the Norris-LaGuardia Act.
>
> 'In our case the Plaintiff carrier and the River Road and its employees did not stand in the position of employer and employee, and *there was no labor dispute between them;* consequently the Lee Way case is not in point." (Emphasis supplied).

and for the opposite reason the *Baltimore & Ohio v. Chicago River* case, (supra) is not in point. There being no labor dispute, Norris-LaGuardia did not apply and the case is not authority for holding that the Transportation Act supersedes the Railway Labor Act and Norris-LaGuardia.

Respondents contend further, that not only have Petitioners failed to comply with those provisions of the Railway Labor Act forbidding changes in working rules and conditions by instituting such changes during the mediation period, they have also violated Section 108 of the Norris-LaGuardia Act (29 U.S.C. 108). The provisions of that section requiring the Complainant to make every reasonable effort to settle such dispute either by negotiations or with the aid of available governmental machinery has not been complied with by Petitioners. In this circumstance no injunction will lie. *See Order of Railroad Telegraphers v. Chicago & N.W. R.R. Co.*, 80 S. Ct. 761; *Butte, Anaconda & Pacific Ry. Co. v. Bof LF& E*, 268 F. 2d 54 (cert. den.), 80 S. Ct. 122.

Petitioners have contended that even though the I.C.C. directive is merely permissive and not mandatory, they

had no option to operate otherwise than they did. This is rather strange since the commission itself provided its order was for "*continued operations* by Texas And New Orleans Railroad Company of port facilities at Corpus Christi", and that one of the only two primary issues considered by it was "the construction and other proposals necessary to obtain a substitute route for *continued operations* by the T&NO in serving *the same* port *area*". Appellants have ignored this and T&NO has given up its "continued operation" of the "same port area" and transferred such work to the CCTA, thus depriving the T&NO employees of their work during the years T&NO does not operate the CCTA (which it does this year). T&NO contends it must use the CCTA substitute because MoPac will not permit it to use MoPac tracks to get to its own tracks. This is an obvious collusion since T&NO does use the tracks when it operates the CCTA.

The Petitioners have likewise even ignored their own agreements in their joint train yard operation, which permits joint operations only on specified tracks in the new yards. T&NO and Tex-Mex now jointly operate over Tex-Mex tracks in the whole of the Corpus Christi Terminal, thus depriving Tex-Mex employees of their work.

The Interstate Commerce Commission itself, in its decision and opinion in Finance Docket 19432, *Chicago, St. Paul, Minneapolis & Omaha Railway Company Lease* (Appendix "B", had proposed to it a similar contention to the effect that because of the exclusive and plenary authority vested in the Commission, Section 6, and related sections of the Railway Labor Act are inapplicable, and that the carrier be relieved of the restraints of such act. The Commission declined to so hold, but did hold that Section 5

(2) (f) of the Transportation Act only authorizes imposition of duties on employers, not employees, and that its orders are permissive, and do not provide any particular method for integration of the physical properties involved and do not deal with employer-employee relationships except for those conditions imposed for protection of employees.

And also in the present case, the orders of the Commission were permissive only, as is seen from the following language, *"It is further ordered,* that, *if* the abandonment and construction herein authorized are exercised, * * *" and *"It is further ordered,* that, *if* the authority granted in this certificate and order has not been exercised within one year from its date, it shall be of no further force or effect (R. 43).

The basis of the strike was set out in Respondents' telegrams to the three Railroads. The testimony discloses that BofRT objected to the deprivation of the work for its members on both T&NO and Tex-Mex Lines. It has only been the single minded purposefulness of the carriers to force their changes upon the employees without consideration of their rights that prevented the agreements. They sought to bolster their positions by securing I.C.C. approval of the changes, yet the joint yard and the CCTA operation of the T&NO's port tracks were instituted before even an application with the Commission was filed.

Consequently the whole matter boils down to a main proposition. Can the Railroads avoid and evade the requirements of the Railway Labor Act to use mediation machinery on proposed changes, or must they follow the clear mandate of the Railway Labor Act in making no changes during the mediation period. We think so, as did the Courts

below. It then follows the Norris-LaGuardia Act prevents an injunction against the self help sought by the employees.

The Honorable Court of Appeals caught the real problem involved herein and dealt with it in such language and reasoning that it cannot be better stated:

> "The essence of the appellants' objective is to unilaterally set certain provisions in a new labor contract in accord with the proposed changes in the Primary Agreement, and to be relieved of an existing labor contract without having to go through the machinery of the Railway Labor Act (the reformation procedure for railway labor contracts) or being subjected to one of the penalties for breach—a strike. They have attempted to accomplish this objective by including such detail in the Primary and supplementary agreements submitted to the ICC for approval as to determine the major provisions of a new labor contract, although at no time were the unions brought into the negotiation of these agreements. The appellants then argue that ICC approval of the agreements makes them binding on the unions. If so, not only does section 5 give the Commission power to approve a section 5 (2) transaction, but it gives the carriers the right to legislate the terms of a continuing contract with a third party, although a different contract more favorable to the third party might have been equally acceptable to the Commission. We do not feel the statute may be so interpreted.
>
> "Section 5 (2) involves "transactions" to achieve certain stipulated ends; these transactions require the approval of the Commission. There is no definition given of what goes into a "transaction," but it appears to be a catchall descriptive term referring to the many different elements involved in mergers, leasing agreements, pooling arrangements, or joint operations. As often described in other contexts, it is a word "of

flexible meaning" and "may comprehend a series of many occurrences, depending not so much upon the immediacy of their connection as upon their logical relationship." See *Cantrell v. City of Caruthersville*, Mo., 1949, 221 S.W. 2d 471, 474; *Kaumagraph Co. v. General Trade Mark Corp.*, D.C.N.Y., 1935, 12 F. Supp 230. Apparently the Commission feels that one of the occurrences or elements involved may be contracts and agreements between interested parties to the transaction, since its regulations require that there be attached to any application for approval of a 5 (2) transaction "a copy of any contract or other written instrument entered into or proposed to be entered into pertaining to the transaction covered by the application." 49 C.F.R. § 52.3 (b) (7). It would further appear from section 5 (2) (c) and (f) that the representatives of the carrier employees are included among the interested parties to a transaction and that a new labor contract may be one of the ingredients of a transaction. Now, are we to read into the authority of the ICC to "approve" a transaction, the right of the carrier to unilaterally create one of the contracts which may be necessary to the completion of that transaction and thereupon bind a third party to it? Clearly, that does not follow as a matter of course from the normal meaning of the terms used in section 5 (2) (a).

"Nor has the ICC, in its interpretation of section 5 (2), found any such hidden authority. It looks upon its duties as purely permissive, approving with appropriate conditions contracts, agreements, and consolidations which are negotiated by the parties under the normally applicable law governing such transactions in other fields. As the Commission has often held, it has no power to compel a carrier to undertake a section 5 (2) transaction. See, *e.g.*, *Baltimore & O. R. Co. Operation*, 261 ICC 535, 544; *Gulf M. & O. R.*

Co. Purchase, 267 ICC 265, 269-70; *Chicago, Saint Paul, M. & O. R. Co. Lease*, 295 ICC 696. Further, it has been unwilling to take upon itself questions of either the interpretation or enforceability of contracts submitted with respect to a transaction. Upon occasion, parties, who have come before the Commission with executory contracts to take effect upon approval by the Commission, wish to withdraw from the proceeding. As the Commission said in refusing to dismiss the proceeding in *McGary Transportation Co. — Purchase (Portion) — Albert J. Demelle*, 50 MCC 608, 611 (1948):

> "As to vendor's desire to withdraw from the transaction, we have repeatedly found that authority granted under former section 213 and present section 5 is permissive only, and may, or may not, be exercised by the parties, and that all matters involving the interpretation and enforcement of the terms of contracts must be left for settlement between the parties themselves or by the courts."

See also, *Watson Bros. Transp. Co. v. Jaffa*, 8 Cir., 1944, 143 F. 2d 340; *O. C. Wiley & Sons v. United States*, W. D. Va., 1949, 85 F. Supp. 542; *Marion Trucking Co. — Purchase — Harwood Trucking Co.*, 50 MCC 613, 632 (1948); *The Service Transport Co. — Purchase (Portion) — F. E. Kerr Co.*, 59 MCC 481.[4] Even where a carrier has transferred the same rights and equipment to two different parties, the Commission has held that it must treat each application on its merits and let the two vendees litigate their conflict in the courts. *Yellow Coach Corp. — Purchase — O. B. Darnell*, 59 MCC 185, 193-94. From

[4] "Authority granted under section 5 is permissive only, and, in the event of a dispute, the contractual rights and obligations of the parties are for determination by the courts rather than by us." 59 MCC at 484.

these cases, we believe the Commission is of the opinion that the carriers must rely upon applicable contract and corporate law to carry their section 5 (2) transaction into effect, and may not rely upon the Commission's "approval" to coerce a recalcitrant party into line. Further, we feel that it would be inconsistent with this construction of the statute to hold that, while the carriers must look to local law to enforce the transaction, unions and other noncarrier parties are bound without their consent by the Commission's permissive approval.

The appellants also argue that when the Commission conditions its approval upon the inclusion of employee protective provisions under section 5 (2) (f), these conditions bind the employees upon the carriers' decision to go through with the transaction. As already noted, however, the Commission has held that it has authority to impose conditions only on the carrier. *Chicago, Saint Paul, M. & O. R. Co. Lease*, 295 ICC 696, 701. Further, we can see little purpose to the last sentence of section 5 (2) (f) if the most that the unions can bargain for is what they can obtain by right from the Commission. This sentence provides:

> "Notwithstanding any other provision of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees."

To permit the railway unions to enter into an agreement, yet deny them the full use of their bargaining power, i.e., the strike, would make the provision meaningless. On the other hand, by giving it full latitude, we achieve a result consistent with our basic view of section 5 (2): that to carry an approved transaction into effect, the parties must rely upon agreements voluntarily entered into and enforced under

> local law. In accord with this reasoning, the Commission has refused to hear employee complaints when a protective agreement has been entered into by the parties, enforceable under the applicable local law. *DeCamp Bus Lines — Purchase — Atlantic Transport Co.*, 65 MCC 452, 456."

Even though Petitioners have not set out in their application any statement as a "question presented" covering a claimed error of the Courts below, their failure to consider the injection into the case a question of "time claims" of employes because of the unilateral changes instituted by the Petitioners, they nevertheless have again brought such matter forward in the body of their application.

There was no evidence adduced during the trial, either by testimony of Respondents' witnesses or by admissions, stipulations of documentary proof that Respondents' based their strike in part on any demand for payment of time claims due to the changes made while mediation was in progress.

This came into the picture only through the testimony of Petitioners' witnesses, L. C. Albert (R. 165-167, 172-173), D. E. Walker (R. 193), and E. F. Wright, Jr. (R. 207), which was to the effect that settlement negotiations reached an impasse because payment of time claims was injected into the settlement negotiations.

Objection was made that such testimony was wholly immaterial which was overruled by the Court's "allowing" the testimony. Further objection was made that the testimon was self-serving and could be no basis for the conclusion by the Court since the same was part of and a matter under negotiation by the parties. Again the testimony was "allowed" by the Court.

It is elementary that offers of compromise or settlement are not admissible. Any negotiation during mediation for

settlement of this labor dispute would be nothing more than an offer of compromise or settlement and the Trial Judge correctly ignored the evidence which he "allowed".

The real and true basis of the purpose of the strike was stated in the telegrams to B. W. Smith, Ben F. Wright and L. C. Albert (Ex. 18, 19, 20 S.R.) which was to the effect that it was called because of the *Carrier's failure to abide by the provisions of the Railway Labor Act in handling mediation cases.*

The Petitioners' Complaint contained no averments or allegations that a minor dispute was involved because of "time claims". No motion for new trial was made or rehearing requested on such theory. This matter was not included as one of the questions presented in Petitioners' Application for Writ of Certiorari. Therefore, such contention is not one properly raised on appeal.

CONCLUSION

Respondents would respectfully show that Petitioners original complaint seeking an injunction was properly denied by the Trial Court, and such action was properly affirmed by the Court of Appeals upon the basis (1) that the Federal Courts do not have jurisdiction to grant injunctions to prevent strikes in a labor dispute, where the procedures of the Railway Labor Act have been fully followed by Respondents, and (2) that the securing of a permissive order by Petitioners from the Interstate Commerce Commission covering changes in rules, working conditions and established practices, does not deprive Respondents from asserting self-help to secure an agreement covering such changes. There is no conflict between a decision of the Honorable Court of Appeals

and any other Court of Appeals or with any decision of this Honorable Court. The matters presented have been properly and correctly decided by the Courts below, and the Writ of Certiorari prayed for by Petitioners should be in all things denied.

Respectfully submitted,

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APPENDIX "A"

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 19432

CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY LEASE

Decided May 5, 1958

Supplemental application of Chicago and North Western Railway Company for supplemental order under section 5(9) of the Interstate Commerce Act, as amended, dismissed. Prior report 295 I.C.C. 441.

Appearances as in previous report, and *Harold N. McLaughlin* and *James L. Highsaw, Jr.*, for interveners in opposition.

SUPPLEMENTAL REPORT OF THE COMMISSION

BY THE COMMISSION:

On December 28, 1956, the Commission, by division 4, approved and authorized the lease by the Chicago and North Western, of the lines of railroad and other properties owned, used, or operated by the Chicago, Saint Paul, Minneapolis and Omaha Railway Company, hereinafter sometimes referred to as the Omaha. *Chicago, St. P., M. & O. Ry. Co. Lease*, 295 I.C.C. 441. The so-called Oklahoma conditions, shown in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I.C.C. 177, were prescribed to protect employees who might be adversely affected by the transaction.

On July 5, 1957, the North Western filed what it termed an application for supplemental relief, requesting that we, pursuant to our authority under sections 5(9) of the Inter-

state Commerce Act, issue an order supplementing the order of December 28, 1956, which supplemental order shall (a) direct the parties to this proceeding[1] immediately to undertake discussions for the purpose of carrying out the integration and unification authorized by the order of December 28, 1956; (b) direct the parties to report back to this Commission in 60 days the status of their mutual efforts, pursuant to our direction aforementioned; (c) *declare that, in consequence of the exclusive and plenary authority vested in this Commission in respect of the unification of railway carriers, Section 6 and related provisions of the Railway Labor Act are inapplicable and that, in order to enable the parties to carry out the transaction authorized and contemplated by our order of December 28, 1956, the parties to this proceeding are expressly relieved of the restraints, limitations, and prohibitions of all other laws, including expressly Section 6 of the Railway Labor Act;* and (d) grant such other and further relief as we may deem necessary or appropriate in the premises to effectuate the order of December 28, 1956.

On August 30, 1957, the Railway Labor Executives' Association and the Brotherhood of Locomotive Engineers, interveners, filed a joint protest and motion to dismiss or deny the supplemental application on grounds (1) that this Commission lacks jurisdiction to grant the requested relief; and (2) the supplemental application fails to state a claim upon which relief can be granted. North Western replied; and oral argument has been held.

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[1] The "parties to this proceeding" are not otherwise defined. The only persons who are parties to the proceeding when the supplemental application was filed are North Western and the Railway Labor Executives' Association; but it appears that relief is sought against 4 operating labor organizations.

Position of North Western.—Effective January 1, 1957, the North Western leased all the lines of railroad and other properties owned, used or operated by the Omaha pursuant to the authority of the order of December 28, 1956. It immediately initiated efforts towards an integrated and unified operation. In the absence of the prescription by us of specific procedures, the North Western attempted to confer with the labor organizations concerning certain changes in operation. These proposed changes primarily involve a system wide revision and integration of road crew assignments, the integration of caboose runs on through trains, and the integration and unification of yard and terminal operations, particularly at common points served by both carriers prior to the lease.

Under operating contracts, existing at the commencement of the lease, former employees of the Omaha were given seniority rights and the right to perform work by seniority districts over all of that company's properties. Under North Western's seniority arrangements, its employees were given the exclusive right to perform work by seniority districts on North Western's properties. It is proposed to consolidate certain of the separate seniority districts on the 2 roads and to revise other seniority districts. Train seniority districts over the entire systems including the Omaha would be reduced from 24 to 8. Many of the districts involved are far removed from the Omaha, and changes relating thereto would not seem necessarily related to accomplishment of unification between North Western and Omaha.

The North Western has successfully concluded agreements with the non-operating labor organizations providing for rearrangement of seniority districts and other measures permitting the integration of the railroads insofar as

those organizations are concerned. However, no progress has been made in the case of proposed changes involving the so-called operating brotherhoods.[2] The North Western extended an invitation to the labor organizations to meet in conference and discuss the changes, but the latter declined to enter into such discussions and insisted that the former present its proposal in the manner required by the Railway Labor Act, 45 U.S.C. 151, *et seq.* The North Western declined to follow this procedure, taking the position that the Railway Labor Act was not applicable to changes occasioned by a unification authorized under section 5 of the Interstate Commerce Act and that we alone have jurisdiction in the matter.

Position of labor organizations.—The labor organizations on April 26, 1957, invoked the services of the National Mediation Board under Section 5 First, of the Railway Labor Act.[3] The organizations took the position that the dispute concerned (1) the proposals of the carriers for changes and revisions in the written agreements of the North Western and the Omaha, and (2) the refusal of the carriers to hold conferences under the Railway Labor Act. It is their view that the proposals for the revisions of their

[2] These include the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, and the Brotherhood of Railroad Trainmen.

[3] This section of the act reads in pertinent part as follows:

"The parties, or either party to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rate of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused."

collective bargaining agreements are subject to the requirements of Section 6 of the Railway Labor Act.

The National Mediation Board, after first advising the labor organizations that the Board's file did not show that a Section 6 notice had been served by either party on the other in connection with intended changes in agreements which might result from the consolidation of the North Western and the Omaha, subsequently found that such notice was contained in a communication, by North Western, dated March 18, 1957, indicating generally the character of the operating changes which it wished to discuss. Thereafter, on June 14, 1957, that Board docketed the proceeding as Case No. A-5495. North Western has advised that Board that it cannot concur in any assumption of jurisdiction by such Board under Section 6 which necessarily implies that our jurisdiction is not exclusive and plenary. North Western states that it would meet with the labor organizations under the auspices of the Board on a voluntary basis, but not under the aegis of the Railway Labor Act.

Upon acceptance of jurisdiction by the National Mediation Board the labor organizations under date of June 17, 1957, distributed to their members a strike ballot by which authority is sought to call a strike on the North Western if there is a failure to agree in the course of Section 6 negotiations.

Discussion of contentions and findings. — The North Western stresses that there are 3 aspects of the order of December 28, 1956, which must be in mind with respect to the issues presented by its supplemental application: First, that the order clearly and specifically contemplated an integration of the physical operations of the roads as

well as other aspects of running railroads in that it referred to the physical integration, to the savings and operational costs that could be realized, and to the improvements in service which would be engendered by physical unification of operations; second, that the order provided for inclusion in its scope of the Oklahoma conditions for the protection of employees adversely affected by the transaction; and third, that the order recognized and exerted what appeared to be the full range of the Commission's powers under section 5(11) of the act.

The North Western states that its efforts to integrate the 2 railroads through its lease with the Omaha have reached an impasse, and therefore it has filed the supplemental application, heretofore described, under section 5(9) of the act, invoking sections 5(2)(b) and 5(11) as the basic sources of our jurisdiction for the relief sought. The pertinent portions of such sections of the act appropriately designated are as follows:

> The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (2), or (7), as it may deem necessary or appropriate. (Section 5(9).)
>
> If the Commission finds that, *subject to such terms and conditions and such modifications as it shall find to be just and reasonable*, the proposed transaction is within the scope of subparagraph (a) and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, *upon the terms and conditions, and with the modifications*, as found to be just and reasonable: * * *." (Italics supplied). (Section 5(2)(b).)
>
> The authority conferred by this section shall be exclusive and plenary, * * * and any carriers or other

> corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal; insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchise acquired through such transaction. (Section 5 (11).)

Northwestern states that it requests us neither to interpret or enforce existing contracts, nor to determine what specific employees will be affected by the proposed operational revisions. It asserts, however, that under section 5 (2) (b) we have the power which may be exercised in appropriate circumstances to condition our approval of proposed unifications on the accomplishment of specified operational revisions which may be deemed necessary to assure realization of the greater operating efficiencies and economics in contemplation. On this basic premise, it requests that we exercise authority under section 5 (2) (b) to prescribe procedures under which, with reference to the authority granted under the order of December 28, 1956, the North Western and the interested labor organizations must by conference and negotiation concur in a plan of operational revisions.

Predicated upon the contention that the divergent purposes served by the Railway Labor Act, on the one hand, and section 5 of the Interstate Commerce Act, on the other, render the procedures of the former a positive

barrier to the achievement of the purposes of the latter, North Western requests that express relief be granted from the restraints, limitations, and prohibitions of the Railway Labor Act.

The North Western relies upon the decision of the United States Court of Appeals, *Kent v. Civil Aeronautics Board*, 204 F. 2d 263 (2d Cir. 1953), cert. den. 346 U.S. 826 (1953), in confirmation of its position as to our authority under section 5. The *Kent* case arose out of the action of the Civil Aeronautics Board in approving, pursuant to provisions of the Civil Aeronautics Act of 1938, following direction of the President, the acquisition of American Overseas Airlines by Pan American World Airways, *North Atlantic Route Transfer Case*, 11 CAB 676 (1950). In a subsequent supplemental opinion that Board addressed itself to the matter of protection of employees of the carriers involved and imposed conditions for the protection of adversely affected employees similar to those imposed by this Commission in section 5(2) proceedings. A difficulty with respect to the integration of some groups of employees was encountered. The Board at first left the solution of such problem to be settled by negotiation by the interested parties and, failing such settlement, to be submitted to arbitration, *North Atlantic Route Transfer Case*, 12 CAB 124 (1950). Some groups of employees did settle their differences by negotiation. In the case of others, agreement was not achieved and the services of the National Mediation Board were invoked. Mediation conferences were held by the National Mediation Board and were successful as to certain employee groups, but unsuccessful as to the flight engineers. Thereupon the Civil Aeronautics Board reopened the case and ordered,

according to a formula, the integration of such employees into the Pan American seniority lists. Subsequently, review of the proceeding was petitioned, limited to that portion of the orders of the Civil Aeronautics Board which provided for the integration of the flight engineers of both carriers involved into the seniority list of the surviving carrier.

The basic contention was that the Civil Aeronautics Board was without jurisdiction to make any order determining the respective seniority rights of the flight engineers. The Court, in its opinion, stated that the statutory authority of that Board to deal with proposed mergers was broad enough to enable that Board "to approve a merger and transfer of a certificate upon such terms and conditions as it shall find to be just and reasonable" in the public interest. "Although" it continued, "there is no express statutory grant of power to impose conditions which will lessen the adverse impact of a merger upon employees of the merged companies, such power is implicit as one necessary to the performance of the Board's duty to condition approval with due regard to terms which are just and reasonable in the interest of the public".

The orders of the Board under attack, went beyond affording financial protection and prescribed a seniority list which the Pan American had to adopt. In this connection, the court said:

> " * * * when a merger involves two or more groups of employees each having separate seniority rights, the public interest in maintaining peaceful labor relations so as to effect an orderly continuation of operations is not always satisfied merely by conditioning approval of the merger on financial protection of the

> employees. Industrial strife may arise by reason of a dispute between the two or more employee groups as to how a unified seniority list should be drawn. And when such a dispute develops, it is within the power of the Board to order the carrier to follow whatever course is necessary and appropriate. An overall supervision of the merging carrier so as to protect adequately the public interest is what Sec. 408 (b) of the Act contemplates, and that is what these orders accomplish. The same power to order the initial integration justifies the Board's further requirement that the employer refrain from making any labor contract in the future which will not conform to it."

It is important to note that the decision in the *Kent* case holds that the power of the Board is to direct the carrier. No requirement was made upon employees. Likewise under section 5 of the act *we merely authorize or permit* the applicant carriers to enter into a proposed transaction. *We may not even compel the carriers to consummate an authorized transaction.* See *Valdosta S.R. Purchase*, 282 I.C.C. 705, 711; *Coordinated-Purchase-Merrilatt*, 56 M.C.C. 635.

Under Section 5(2)(f) of the act, we are *required* to impose upon the carriers in each approved transaction, conditions for the protection of railroad employees affected. *But this section only authorizes the imposition of duties upon the carrier. It does not authorize us to direct the employees or organizations of employees to do anything. Thus, North Western's request that we order such parties to negotiate and report back to us must be denied.*

The North Western has further requested that we issue a supplemental order which shall declare that, in consequence of exclusive and plenary authority vested in this

Commission in respect to the unification of railway carriers, section 6 and related provisions of the Railway Labor Act are inapplicable, and that, in order to enable the parties to carry out the transaction authorized and contemplated by the order of December 28, 1956, the parties to the proceeding are expressly relieved of the restraints, limitations, and prohibitions of all other laws, including expressly section 6 of the Railway Labor Act. In requesting such a declaration by us, North Western relies primarily upon the provisions of paragraph 11 of section 5, *supra*. *We find nothing in that paragraph, or in other portions of section 5, which authorizes us to determine and declare the particular laws within the scope of paragraph (11) from which a carrier shall be relieved.* The terms of this paragraph are self-executing, and *there is no need for this Commission expressly to order or declare that a carrier be relieved from certain* restraints. It is sufficient if we make clear what the carrier is authorized to do. *Seaboard Air Line R. Co. v. Daniel*, 333 U.S. 118. *Congress has not conferred upon us the power to determine the disputes which are subject to the Railway Labor Act or questions regarding the jurisdiction of the National Mediation Board, which, in effect, is what North Western requests us to do.*

It is apparent that *the Railway Labor Act has not prevented the North Western from effectuating the transaction authorized by the prior order. That order authorized the lease by North Western of the lines of railroad and other properties owned, used, or operated by the Omaha, and this has been accomplished.* The order did not provide any particular method for integration of the physical operations involved; and, except for the imposition of the

above-mentioned conditions for the protection of employees, did not deal with employer-employee relationships.

In view of the foregoing, we find that we have no authority to grant the relief which North Western requests, and its supplemental application will be dismissed.

An appropriate order will be entered.

GOFF, Commissioner, did not participate in the disposition of this proceeding. (Emphasis supplied).

APPENDIX "B"

362 U.S. 330—Order of Railroad Telegraphers, et al., Petitioners, v. Chicago and North Western R. Co., a corporation, No. 100:

Mr. Justice BLACK delivered the opinion of the Court.

According to the verified complaint filed in a United States District Court in Illinois by the respondent, Chicago & North Western Railway Company, against the petitioners, the Order of Railroad Telegraphers and its officials, "This is an action for injunction to restrain and enjoin the calling and carrying out of a wrongful and unlawful strike or work stoppage on plaintiff's railroad." Section 4 of the Norris-LaGuardia Act provides, however, that "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of *any labor dispute* to prohibit any person or persons * * * from * * * (a) Ceasing or refusing to perform any work or to remain in any relation of employment; * * *[1] The main question in this case then was, and still is, whether this prohibition of the Norris-LaGuardia Act bars an injunction in the circumstances of this case.

Respondent railroad, owning and operating a rail system of over 9,000 miles in the States of Illinois, Wisconsin, Iowa, Minnesota, Michigan, Nebraska, South Dakota, North Dakota, and Wyoming, is an integral part of the nationwide railway system important to the transportation of passengers and freight in interstate commerce. When the railroad began operations, about 100 years ago, traffic was such that railroad stations were established about 7 to 10

[1] 47 Stat. 70, 29 U.S.C. § 104, 29 U.S.C.A. § 104. (Emphasis supplied.)

miles apart. Trucks, automobiles, airplanes, barges, pipelines and modern roads have reduced the amount of railroad traffic so that the work now performed at many of these stations by agents is less than one hour during a normal eight-hour day. Maintenance of so many agencies where company employees do so little work, the complaint alleges, is wasteful and consequently in 1957 the railroad filed petitions with the public utility commissions in four of the nine States in which it operated asking permission to institute a "Central Agency Plan whereby certain stations would be made central agencies * * *" and others abolished. The plan would necessarily result in loss of jobs for some of the station agents and telegraphers, members of the petitioner union. A few weeks after the state proceedings were filed and before any decision had been made, the petitioner union, the duly recognized, certified and acting collective bargaining agent for the railroad's employees, notified the railroad under § 6 of the Railway Labor Act, 45 U.S.C.A. § 156, 45 U.S.C.A. § 156, that it wanted to negotiate with the railroad to amend the current bargaining agreement by adding the following rule:

> "No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the carrier and the organization."

The railroad took the position, according to its complaint, that this request did not constitute a "labor dispute under the Railway Labor Act," that it did not raise a bargainable issue, and that the union had no right to protest or to seek relief except by appearing before the state public utility commissions which had power to determine whether station agencies could be discontinued, a power which private parties could not thwart by entering into a bargaining agreement. The respondent added that maintenance of the

unnecessary agencies was offensive to the national transportation policy Congress adopted in the Interstate Commerse Act, 49 U.S.C. §§ 1-27, 49 U.S.C.A. §§ 1-27, and that the duties that Act imposed on railroads could not be contracted away.

The union contended that the District Court was without jurisdiction to grant injunctive relief under the provisions of the Norris-LaGuardia Act because this case involved a labor dispute, and that the railroad had refused to negotiate in good faith on the proposed change in the agreement in violation of § 2, First, of the Railway Labor Act, 45 U.S.C. § 152, First, 45 U.S.C.A. § 152, subd. 1, which requires the railroad to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions. Therefore, the union argued, an injunction in federal court is barred if for no other reason because of § 8 of the Norris-LaGuardia Act which provides:

> "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration." 29 U.S.C. § 108, 29 U.S.C.A. § 108.

See Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. R., 321 U.S. 50, 64 S. Ct. 413, 88 L. Ed. 534.

After hearings, the District Court found, so far as is relevant here, that the railroad "refused to negotiate, confer, mediate or otherwise treat with defendant Telegraphers on the proposed change in agreement set forth in the Section 6 notice," although the railroad "did show willingness to negotiate upon the central agency plan, including a possibility concerning severance pay"; that the proposed

contract change referred to in the § 6 notice "relates to the length or term of employment as well as stabilization of employment" and that collective bargaining as to the length or term of employment is commonplace; that "The dispute giving rise to the proposed strike is a major dispute and not a minor grievance under the Railway Labor Act, and no issue involved therein is properly referable to the National Railroad Adjustment Board";[2] and that the contract change proposed in the § 6 notice related to "rates of pay, rules and working conditions," and was therefore a bargainable issue under the Railway Labor Act. On its findings and conclusions of law, the District Court granted temporary relief but declined to grant a permanent injunction on the ground that it was without jurisdiction to do so.

[1] On appeal the Court of Appeals did grant a permanent injunction upon its decision that "The District Court's finding that the proposed contract change related to 'rates of pay, rules, or working conditions,' and was thus a bargainable issue under the Railway Labor Act, is clearly erroneous."[3] It held that the Norris-LaGuardia Act did not apply to bar an injunction against this strike[4] and we

[2] See Brotherhood of Railroad Trainmen v. Chicago River & I. R. Co., 353 U.S. 30, 77 S. Ct. 635, 1 L. Ed. 2d 622.

[3] Chicago & N. W. R. Co. v. Order of Railroad Telegraphers, 264 F. 2d 254, at page 260.

[4] Ibid. See Brotherhood of Railroad Trainmen v. New York Central R. Co., 6 Cir., 246 F. 2d 114. But see A. H. Bull Steamship Co. v. Seafarers' International Union, 2 Cir., 250 F. 2d 326.

At the time of the District Court's decision, two States (South Dakota and Iowa) of the four in which the railroad sought permission to institute its Central Agency Plan (the other two were Minnesota and Wisconsin) had granted permission and the plan was promptly placed in effect. Since then, we are given to understand, the commissions in the remaining two States have issued orders approving the plan.

granted certiorari, 361 U.S. 809, 80 S. Ct. 56, 4 L. Ed. 2d 58, to consider this important question.[5]

[2] We hold, with the District Court, that this case involves or grows out of a labor dispute within the meaning of the Norris-LaGuardia Act and that the District Court was without jurisdiction permanently to enjoin the strike.

Section 4 of the Norris-LaGuardia Act specifically withdraws jurisdiction from a District Court to prohibit any person or persons from "[c]easing or refusing to perform any work or to remain in any relation of employment" "in any case involving or growing out of any labor dispute" as "herein defined."[6] Section 13 (c) of the Act defines a labor dispute as including,

> "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."[7]

Unless the literal language of this definition is to be ignored, it squarely covers this controversy. Congress made the definition broad because it wanted it to be broad. There are few pieces of legislation where the congressional hearings, committee reports, and the language in the legislation itself more clearly point to the necessity for giving an Act a construction that will protect the congressional

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[5] Compare Marine Cooks & Stewards v. Panama Steamship Co., 362 U.S. 365, 80 S. Ct. 779.

[6] 29 U.S.C. § 104, 29 U.S.C.A. § 104.

[7] 29 U.S.C. § 113(c), 29 U.S.C.A. § 113(c).

policy the Act adopted. Section 2 of this Act specifies the public policy to be taken into consideration in interpreting the Act's language and in determining the jurisdiction and authority of federal courts; it is one of freedom of association, organization, representation and negotiation on the part of workers.[8] The hearings and committee reports reveal that Congress attempted to write its bill in unmistakable language because it believed previous measures looking toward the same policy against nonjudicial intervention in labor disputes had been given unduly limited construction by the courts.[9]

Plainly the controversy here relates to an effort on the part of the union to change the "terms" of an existing collective bargaining agreement. The change desired just as plainly referred to "conditions of employment" of the railroad's employees who are represented by the union. The employment of many of these station agents inescapably hangs on the number of railroad stations that will be either completely abandoned or consolidated with other stations. And, in the collective bargaining world today, there is nothing strange about agreements that affect the permanency of employment. The District Court's finding that "[c]ollective bargaining as to the length or term of employment is commonplace," is not challenged.

[3] We cannot agree with the Court of Appeals that the union's effort to negotiate about the job security of its members "represents an attempt to usurp legitimate man-

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[8] 29 U.S.C. § 102, 29 U.S.C.A. § 102.

[9] See Allen Bradley Co. v. Local Union No. 3, 325 U.S. 797, 805, 65 S. Ct. 1533, 1538, 89 L. Ed. 1939; United States v. Hutcheson, 312 U.S. 219, 230-236, 61 S.Ct. 463, 465-468, 85 L. Ed. 788; Milk Wagon Drivers' Union Local 753 v. Lake Valley Farm Products Inc., 311 U.S. 91, 102-103, 61 S. Ct. 122, 127-128, 85 L. Ed. 63.

agerial prerogative in the exercise of business judgment with respect to the most economical and efficient conduct of its operations."[10] The Railway Labor Act and the Interstate Commerce Act recognize that stable and fair terms and conditions of railroad employment are essential to a well-functioning national transportation system. The Railway Labor Act safeguards an opportunity for employees to obtain contracts through collective rather than individualistic bargaining. Where combinations and consolidations of railroads might adversely affect the interests of employees, Congress in the Interstate Commerce Act has expressly required that before approving such consolidations the Interstate Commerce Commission "shall require a fair and equitable arrangement to protect the interests of the railroad employees affected."[11] It requires the Commission to do this by including "*terms and conditions*" which provide that for a term of years after a consolidation employees shall not be "in a worse position with respect to their employment" than they would otherwise have been.[12] (Emphasis supplied.)

In 1942 this Court held that when a railroad abandons a portion of its lines, the Interstate Commerce Commission has power to include conditions for the protection of displaced workers in deciding what "the public convenience and necessity may require." We so construed the Interstate Commerce Act specifically on the basis that imposition of such conditions "might strengthen the national system through their effect on the morale and stability of railway

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[10] 264 F. 2d at page 259.

[11] 49 U.S.C. § 5(2) (f), 49 U.S.C.A. § 5(2) (f). And see § 5(2) (c).

[12] 49 U.S.C. § 5(2) (f), 49 U.S.C.A. § 5(2) (f).

workers generally." Interstate Commerce Comm. v. Railway Labor Exec. Ass'n, 315 U.S. 373, 375, 62 S.Ct. 717, 720, 86 L.Ed., 904, citing United States v. Lowden, 308 U.S. 225, 60 S.Ct. 248, 84 L.Ed. 208. The brief for the railroad association there called our attention to testimony previously given to Congress that as early as 1936 railroads representing 85% of the mileage of the country had made collective bargaining agreements with their employees to provide a schedule of benefits for workers who might be displaced or adversely affected by coordinations or mergers.[13] In an effort to prevent a disruption and stoppage of interstate commerce, the trend of legislation affecting railroads and railroad employees has been to broaden, not narrow, the scope of subjects about which workers and railroads may or must negotiate and bargain collectively. Furthermore, the whole idea of what is bargainable has been greatly affected by the practices and customs of the railroads and their employees themselves. It is too late now to argue that employees can have no collective voice to influence railroads to act in a way that will preserve the interestss of the employees as will as the interests of the railroad and the public at large.

[4, 5] The railroad has argued throughout the proceedings that the union's strike here may be enjoined, regardless of Norris-LaGuardia, because its effort to bargain about the consolidation and abandonment of railroad stations is unlawful. It is true that in a series of cases where collective bargaining agents stepped outside their legal duties and violated the Act which called them into being, we held

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[13] Hearings before the House Committee on Interstate and Foreign Commerce on H.R. 2531, 76th Cong., 1st Sess. 216-217.

that they could be enjoined.[14] None of these cases, however, enjoined conduct which the Norris-LaGuardia Act withdrew from the injunctive power of the federal courts except the Chicago River case which held that a strike could be enjoined to prevent a plain violation of a basic command of the Railway Labor Act "adopted as a part of a pattern of labor legislation." 353 U.S. 30, 42, 77 S.Ct. 635, 641. The Court there regarded as inapposite those cases in which it was held that the Norris-LaGuardia Act's ban on federal injunctions is not lifted because the conduct of the union is unlawful under some other, nonlabor statute.[15]

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[14] Brotherhood of Railroad Trainmen v. Chicago River & I. R. Co., 353 U.S. 30, 77 S.Ct. 635, 1 L.Ed. 2d 622; Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768, 72 S.Ct. 1022, 96 L.Ed. 1283; Graham v. Brotherhood of Locomotive Firemen & Enginemen, 338 U.S. 232, 70 S.Ct. 14, 94 L.Ed. 22; Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210, 65 S.Ct. 235, 89 L.Ed. 187; Virginia R. Co. v. System Federation No. 40, 300 U.S. 515, 57 S.Ct. 592, 81 L.Ed. 789. See also Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448, 457-459, 77 S.Ct. 912, 918-919, 923, 1 L.Ed. 2d 972. And see Steele v. Louisville & N. R. Co., 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173.

[15] The Court cited the following cases to show that unlawfulness under nonlabor legislation did not remove the restrictions of the Norris-LaGuardia Act upon the jurisdiction of federal courts: Milk Wagon Drivers' Union Local 753 v. Lake Valley Farm Products, Inc., 311 U.S. 91, 103, 61 S.Ct. 122, 128, 85 L.Ed. 63 (alleged violations of Sherman Act, 15 U.S.C.A. §§ 1-7, 15 note); East Texas Motor Freight Lines v. International Brotherhood of Teamsters, 5 Cir., 163 F. 2d 10, 12 (violation of Interstate Commerce Act and Motor Carrier Act).

Of course, a holding here that mere unlawfulness under any law is enough to remove the strictures of the Norris-LaGuardia Act would require a modification or abandonment of our statement that "For us to hold, in the face of this legislation [the Clayton and Norris-LaGuardia Acts], that the federal courts have jurisdiction to grant injunctions in cases growing out of labor disputes, merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the [Norris-LaGuardia] Act and would reverse the declared purpose of Congress." Milk

Here, far from violating the Railway Labor Act, the union's effort to negotiate its controversy with the railroad was in obedience to the Act's command that employees as well as railroads exert every reasonable effort to settle all disputes "concerning rates of pay, rules, and working conditions." 45 U.S.C. § 152, First, 45 U.S.C.A § 152, subd. 1. Moreover, neither the respondent nor anyone else points to any other specific legal command that the union violated here by attempting to bring about a change in its collective bargaining agreement. It would stretch credulity too far to say that the Railway Labor Act, designed to protect railroad workers, was somehow violated by the union acting precisely in accordance with that Act's purpose to obtain stability and permanence in employment for workers. There is no express provision of law, and certainly we can infer none from the Interstate Commerce Act, making it unlawful for unions to want to discuss with railroads actions that may vitally and adversely affect the security seniority and stability of railroad jobs.[16] And for a number of reasons the state public utility proceedings, invoked by the railroad to obtain approval of consolidation or abandon-

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Wagon Drivers' Union Local 753 v. Lake Valley Farm Products, Inc., 311 U.S. 91, 103, 61 S.Ct. 122, 128, 85 L.Ed. 63. See also Lee Way Motor Freight v. Keystone Freight Lines, 10 Cir., 176 F. 2d 931, 934.

[16] Moreover, this railroad operates in nine States; it has instituted proceedings in the state regulatory commissions of four only and at the time of the District Court's decision, only two of these had rendered decisions. Yet the union's proposal was to negotiate for a clause which would apply to respondent's entire system. The railroad's refusal to bargain was not limited, however, to operations in the four States in which proceedin had begun. And even assuming that the order of one State, South Dakota, was mandatory and that this fact is of importance, it would not relieve the railroad from any duty it had to bargain on the proposed contract change in the eight other States involved.

ment of stations, could not stamp illegality on the union's effort to negotiate this whole question with the railroad. The union merely asked for a contractual right to bargain with the railroad about any voluntary steps it might take to abandon stations or to seek permission to abandon stations and thus abolish jobs. Nothing the union requested would require the railroad to violate any valid law or the valid order of any public agency. There is no testimony and there are no findings that this union has set itself up in defiance of any state mandatory order. In fact, there was no state order of any kind at the time the union first asked to negotiate about the proposed contractual change. Even if a Norris-LaGuardia "labor dispute" could not arise out of an unlawful bargaining demand, but see Afran Transport Co. v. National Maritime Union, D. C., 169 F. Supp. 416, 1959 A.M.C. 326, the union's proposal here was not unlawful.

The union contends that, whether the state rulings were mandatory or permissive, the States are without authority to order an abandonment of stations that would conflict with collective bargaining agreements made or to be made between the railroad and the union. Whether this contention is valid or not we need not decide since there is no such conflict before us. And the District Court expressly refused to find that the union's proposal was prompted by the railroad's action in seeking state authority to put its Central Agency Plan into effect. Instead, the District Court specifically found that the dispute grew out of the failure of the parties to reach an agreement on the contract change proposed by the union.

Only a word need be said about the railroad's contention that the dispute here with the union was a minor one relating to an interpretation of its contract and therefore

one that the Railway Labor Act requires to be heard by the National Railroad Adjustment Board. We have held that a strike over a "minor dispute" may be enjoined in order to enforce compliance with the Railway Labor Act's requirement that minor disputes be heard by the Adjustment Board. Brotherhood of Railroad Trainmen v. Chicago River & I. R. Co., 353 U.S. 30, 77 S.Ct. 635, 1 L.Ed. 2d 622. But it is impossible to classify as a minor dispute this dispute relating to a major change, affecting jobs, in an existing collective bargaining agrement, rather than to mere infractions or interpretations of the provisions of that agreement. Particularly since the collective bargaining agreement which the union sought to change was a result of mediation under the Railway Labor Act, this is the type of major dispute that is not governed by the Adjustment Board.

[7] In concluding that the injunction ordered by the Court of Appeals is forbidden by the Norris-LaGuardia Act, we have taken due account of the railroad's argument that the operation of unnecessary stations, services and lines is wasteful and thus runs counter to the congressional policy, expressed in the Interstate Commerce Act, to foster an efficient national railroad system. In other legislation, however, like the Railway Labor and Norris-LaGuardia Acts, Congress had acted on the assumption that collective bargaining by employees will also foster an efficient national railroad service. It passed such Acts with knowledge that collective bargaining might sometimes increase the expense of railroad operations because of increased wages and better working conditions. It goes without saying, therefore, that added railroad expenditures for employees cannot always be classified as "wasteful." It may be, as some people think, that Congress was unwise in

curtailing the juridiction of federal courts in railroad disputes as it did in the Norris-LaGuardia Act. Arguments have even been presented here pointing to the financial debilitation of the respondent Chicago & North Western Railroad and to the absolute necessity for the abandonment of railroad stations. These arguments, however, are addressed to the wrong forum. If the scope of the Norris-LaGuardia Act is to be cut down in order to prevent "waste" by the railroads, Congress should be the body to do so. Such action is beyond the judicial province and we decline to take it.

There are other subsidiary questions raised with refernce to the validity of a second 30-day restraining order issued by the district judge and an injunction pending appeal under Rule 62 (c) of the Federal Rules of Civil Procedure, 28 U.S.C.A. But since we have determined the main controversy between the parties, we think it inadvisable to decide either of these questions now. We intimate no opinion concerning either at this time.

The judgment of the Court of Appeals is reversed and that of the District Court is affirmed insofar as it held that the court was without jurisdiction under the Norris-LaGuardia Act to enter the injunction. It is so ordered.

Judgment of Court of Appeals reversed and judgment of District Court affirmed in part.

APPENDIX "C"

STATUTES INVOLVED

RAILWAY LABOR ACT, AS AMENDED 48 STAT. 1186, 45 USC, SEC. 151(a); 63 STAT. 107; 45 USC 155 (FIRST):

§ 151a. General purposes

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions. May 20, 1926, c. 347, § 2, 44 Stat. 577; June 21, 1934, c. 691, § 2, 48 Stat. 1186.

§ 155. Functions of Mediation Board—Disputes within jurisdiction of Mediation Board

First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the followng cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National

Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amiable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of this title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

NORRIS-LaGUARDIA ACT, 47 STAT. 70 ET SEQ.; 29 USC 102, 107, 113.

§ 102. Public policy in labor matters declared

In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed

with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted. Mar. 23, 1932, c. 90, § 2, 47 Stat. 70.

§ 107. Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in an case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No tem-

porary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. Mar. 23, 1932, c. 90, § 7, 47 Stat. 71.

§ 113. Definitions of terms and words used in chapter

When used in this chapter, and for the purposes of this chapter—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are em-

ployees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

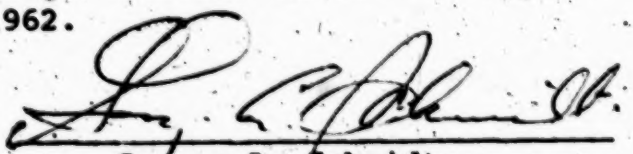
(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia. Mar. 23, 1932, c. 90, § 13, 47 Stat. 73.

CERTIFICATE OF SERVICE

I, George L. Schmidt, attorney for Respondents, do hereby certify that I have furnished two copies of the foregoing Brief For Respondents In Reply to Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit to Mr. Tom M. Davis, Baker, Botts, Shepherd & Coates, Esperson Building, Houston, Texas; Mr. Palmer Hutcheson, Jr., Esperson Building, Houston, Texas; and Mr. Elmore H. Borchers, Laredo, Texas, by depositing same in the United States mail, properly addressed, with sufficient postage thereon, on the 7th day of December, 1962.



George L. Schmidt